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No. 541

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

MICHIGAN CONSOLIDATED GAS COMPANY, *Petitioner*,

v.

FEDERAL POWER COMMISSION, PANHANDLE EASTERN PIPE LINE COMPANY, UNION GAS COMPANY OF CANADA, LIMITED, *Respondents*.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENT, UNION GAS COMPANY OF CANADA, LIMITED, IN OPPOSITION

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OPINIONS BELOW

The decision of the Presiding Examiner (J.A. 1210-56) is unreported.[1] The opinion and order of the Federal Power Commission (Commission) (J.A. 1289-1346) are reported at 15 F.P.C. 46 (1956), and the Commission's order denying rehearing (J.A. 1384-88) is reported at 16 F.P.C. 870 (1956). The opinion of the Court of Appeals is reported at 246 F. 2d 904 (3d Cir. 1957).

JURISDICTION

The statement of the jurisdiction is correctly given in the Petition.

[1] References to "J.A." are to pages of the Joint Appendix, copies of which have been lodged with the Clerk by the petitioner.

QUESTIONS PRESENTED

The Petition inaccurately states the questions presented. A more accurate phrasing would be:

1. Did the Commission abuse its discretion under Section 3 of the Natural Gas Act when, in applying well-established criteria to the facts presented, it found that a proposed exportation of off-peak gas would not be inconsistent with the public interest?

2. Did the Court of Appeals err in affirming the Commission's finding that there was insufficient evidence to support the petitioner's alternative proposal for converting a particular natural gas producing field into a storage field for this off-peak gas?

STATUTE INVOLVED

The only statutory provision involved is Section 3 of the Natural Gas Act, 15 U.S.C., § 717b.

STATEMENT

As will appear below, this case, like hundreds of others arising from administrative agency action, turns on its facts, and petitioner's real quarrel is that the issues of fact were resolved adversely to it. In its effort to generate issues of law in order to obtain a second judicial review, petitioner has presented a distorted version of this case. This is especially true with respect to the alleged need for gas by Panhandle Eastern Pipe Line Company's (Panhandle's) customers, the practice followed by the Commission regarding preferences to domestic customers in export cases, the holding of the court below, and the existence of an alleged conflict with a decision of the Court of Appeals for the District of Columbia.

The order which petitioner attacks authorizes Panhandle to export up to 15,500,000 Mcf of *off-peak* gas annually for sale to Union Gas Company of Canada, Limited (Union) for storage and supply of consumers in southwestern Ontario. The contract between Panhandle and Union under which the gas is to be exported provides for the sale of 10,500,000 Mcf in the first year with increases of 1,000,000 Mcf per year until the sixth and subsequent years when the maximum volume of 15,500,000 Mcf is to be supplied. The contract specifically provides that Panhandle shall have the right to curtail or interrupt deliveries of gas to Union at any time subject only to the requirement that annual or seasonal volumes deliverable do not fall below certain specified amounts (J.A. 636-37). *No peak day deliveries* are required or contemplated under the contract; in fact, Panhandle has great flexibility in the timing of deliveries (J.A. 803).

The Panhandle-Union contract provides furthermore that it will be automatically cancelled if, prior to November 1, 1960, gas is available to Union from Trans-Canada Pipelines Ltd. (Trans-Canada), but not until Panhandle has made deliveries of gas to Union for one year after Trans-Canada gas is available (J.A. 652-53). The reason for this provision is that Union has entered into a contract with Trans-Canada for the purchase of natural gas from the Province of Alberta in substantially the same volumes as those stipulated in the Panhandle-Union contract (J.A. 805-47).[2] As petitioner recognized in its reply

[2] In this connection, the Commission was advised by a letter dated January 25, 1955, from Hon. C. D. Howe, Canadian Minister of Trade and Commerce, that it was the hope of the Canadian

brief in the Court of Appeals (See pp. 7-8, n. 18), the financing of the Trans-Canada pipeline has been completed; and the line is now being constructed. It is thus more than probable that notice of the termination of the Panhandle-Union agreement will be given by Union before November 1, 1960.

Petitioner's contentions here rest largely on its erroneous allegations that the firm peak-day requirements of Panhandle's customers have been proved to be 187,200 Mcf per day in excess of Panhandle's capacity. The facts are as follows.

Heard together with Panhandle's export application was an application by Panhandle and its subsidiary, Trunkline, for authority to expand its pipeline capacity. During the consolidated proceeding, the original estimates of expansion of peak-day capacity had to be reduced by 187,200 Mcf per day because of unforeseen geological characteristics which delayed development of a field which Panhandle intended to use for storage. Thereupon, following negotiation, the agreed-upon estimates of Panhandle's wholesale customers in the United States as to the amount of *peak-day* gas which they might need to supply future retail customers (See J.A. 1247), were correspondingly reduced.[3]

Government that the proposed export by Panhandle to Union would be authorized so as to enable Union to develop its markets for the ultimate receipt of gas from Alberta (J.A. 248-50).

[3] As to some of these wholesale customers, including East Ohio Gas Co. and Michigan Gas Storage Co., the reduction in estimated peak-day requirements was considerably offset by arrangements for off-peak gas to be delivered to them for storage (J.A. 752-56, 861).

In no case did the reductions in these estimates represent gas which Panhandle was required to deliver under any certificate of public convenience and necessity. Over 260,000 Mcf of new peak-day capacity was eventually authorized in the consolidated proceeding, and this entire increase was distributed among Panhandle's wholesale customers in the United States. During the hearing, none of the customers who received a share of this increase claimed that the increase was insufficient for their needs. Significantly, petitioner did not seek, nor does it now complain of any failure to receive, an increase in its own contract demand, under which it receives 127,000 Mcf per day from Panhandle throughout the year.

It is on these facts that petitioner, who made no complaint whatsoever that its own peak-day requirements were not being met, alleges that the peak-day requirements of Panhandle's other customers in the United States, who similarly made no complaint, were 187,200 Mcf per day in excess of Panhandle's capacity, and that therefore the gas to be exported to Canada was needed in the United States. Inasmuch as the original estimates on which the asserted 187,200 Mcf deficiency is based were abandoned by Panhandle's customers and were unsupported by evidence before the Commission, such estimates could not constitute reliable evidence of inadequate service by Panhandle. In the light of Panhandle's existing service, its steady growth, and the failure of any customers other than petitioner to complain, the Commission specifically concluded that no threat to the adequacy of Panhandle's service existed (J.A. 1386). Thus, the 187,200 Mcf figure which is the key to petitioner's

argument as to alleged inadequacy of service is wholly illusory.

In view of the Commission's long familiarity with the Panhandle-Union export situation,[4] it is highly significant that in this case the Commission, after extensive hearings in which all relevant matters were thoroughly canvassed, was able to find that:

> "... the record in this case would not support a finding that the proposed exportation is inconsistent with the public interest. . . . 'it is consistent with the public interest for gas to be exported to our neighbor and ally, Canada'; and it is consistent also with the policies of cooperation and joint endeavor which have for so long characterized the relations of this nation and Canada not only in matters of defense, but also in matters relating to our respective economies, that the proposed increased deliveries to Union as requested by Panhandle be authorized." (J.A. 1321).

In so finding the Commission was aware that prior to this case, interchange of natural gas between the United States and Canada heavily favoring the United States had reached major proportions.[5] The

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[4] See Panhandle Eastern Pipe Line Co., 5 F.P.C. 472, 475 (1946); 7 F.P.C. 48, 75-76 (1948); 10 F.P.C. 328, 332-40 (1951).

[5] In F.P.C. Docket No. G-8932, — F.P.C. — (1955), F.P.C. Opinion No. 289, dated Nov. 25, 1955, Pacific Northwest Pipeline Corporation was authorized to import 300,000 Mcf of gas per day from Canada. In F.P.C. Dockets No. G-2805 and G-2806, — F.P.C. — (1955), F.P.C. order dated May 19, 1955, Montana Power Company was authorized to import from Canada up to 100,000 Mcf per day and 20,000,000 Mcf of gas per year. In F.P.C. Dockets No. G-9451 and G-9452, Midwestern Gas Transmission Corporation has applied for authority to import 200,000 Mcf

Commission was likewise aware that in the past natural gas originating in the western portion of the Province of Ontario was exported for consumption in Detroit and Toledo; and that natural gas originating in the eastern portion of Ontario was exported for consumption in Buffalo, and that these exportations were responsible for depleting the supply of gas which would otherwise have been available for supplying the markets served by Union. See *Panhandle Eastern Pipe Line Co.*, 5 F.P.C. 472, 474 (1946).

REASONS FOR DENYING THE WRIT

I. AUTHORIZATION OF THE PROPOSED EXPORTATION WAS CLEARLY WITHIN THE COMMISSION'S STATUTORY AUTHORITY AND WAS COMPLETELY IN ACCORD WITH THE COMMISSION'S ESTABLISHED POLICIES.

Section 3 of the Natural Gas Act provides that "the Commission shall issue such order [authorizing export] upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest."[6] In the present case, after a full hearing, the Commission not only found that the proposal was not incompatible with the public interest, but also

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per day from Canada and in the same overall proceeding is an application by Midwestern's affiliate, Tennessee Gas Transmission Company, for permission to export up to 86,000 Mcf per day to Canada.

[6] In Cia Mexicana de Gas, S. A. v. F.P.C., 167 F. 2d 804, 806 (5th Cir. 1948), the court stated that an authorization must be issued "*unless the commission makes a negative finding.*" See also Pacific Power & Light Co. v. F.P.C., 111 F. 2d 1014, 1016 (9th Cir. 1940).

stated that the proposed exportation was in harmony with the affirmative "policies of cooperation and joint endeavor which have for so long characterized the relations of this nation and Canada." (J.A. 1321). One of the factors considered by the Commission in passing on applications under Section 3 is whether or not the proposed exportation will impair the adequacy of service to the applicant's customers in the United States. Although the Petition claims (Petition, page 11) that the decision in this case "represented a radical departure from prior policy" on the question of adequacy of service, the record reveals that the Commission considered the question and made the following finding:

> "None of Panhandle's other customers has expressed any of the fears voiced by Michigan Consolidated of the possibility of impairment of service, and we cannot assume that the export authorization would endanger Panhandle's service to them. On the contrary, the facts respecting Panhandle's service to its existing domestic customers convince us that no such threat exists. Of course this is a matter of judgment, but the conclusion is based upon a close and continuing study and contact with facts and conditions over some considerable time and thus is probably as accurate as any such forecast can be." (J.A. 1386-87).

Elsewhere in its opinion the Commission stated that among the factors it would consider was "the degree of reliability an applicant has demonstrated in meeting the requirements of its customers" and that, "In regard to all these factors the record provides substantial support for the proposed exportation of gas by Panhandle." (J.A. 1316).

Notwithstanding the Commission's findings to the contrary, petitioner still claims that this gas "is clearly and urgently needed" in the United States. (Petition, page 11). In support of this contention petitioner relies upon the alleged deficiency of 187,200 Mcf per day, a deficiency which we have shown to be illusory. Even assuming that petitioner has standing to raise the alleged needs of others in review proceedings,[7] it is clear that the Commission acted properly in refusing to rely on abandoned estimates which were wholly unsupported by evidence. It is likewise clear that petitioner's quarrel with the Commission's finding as to adequacy of service has nothing whatsoever to do with legal principles but is solely an objection to the weight attached by the Commission to the evidence before it.[8]

Petitioner has attempted to circumvent this finding by shifting its argument and urging that the Com-

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[7] Section 19(b) of the Natural Gas Act, 15 U.S.C., §717r(b), provides: "Any party to a proceeding under this chapter aggrieved by an order . . . may obtain a review of such order. . . ." There is considerable doubt that petitioner has been aggrieved by the alleged failure of Panhandle to satisfy the peak-day requirements of its other wholesale customers. See Panhandle Eastern Pipe Line Co. v. F.P.C., 219 F. 2d 729, 732 (3d Cir. 1955); Arkansas Louisiana Gas Co. v. F.P.C., 113 F. 2d 281, 284 (5th Cir. 1940).

[8] In Manufacturers Light & Heat Co. v. F.P.C., 206 F. 2d 404, 407 (3d Cir. 1953), the court, in analyzing another provision of the Natural Gas Act, stated:

> "What constitutes impairment of a natural-gas company's ability to render adequate service to its customers is not defined in the Act. Congress, therefore, committed to the Commission the determination, by application of its informed judgment upon the pertinent facts and circumstances presented by each case, whether such an impairment would result."

mission's unwillingness to require that domestic customers must at all times receive preferential service constitutes a departure from settled practice and indicates that domestic service was inadequate. This argument is both misleading and inaccurate.

In the period immediately following World War II, the Commission in a few cases determined that because of then existing gas shortages, export orders would be conditioned to give preference to any domestic demand for the gas to be exported. *E.g.*, *Panhandle Eastern Pipe Line Co.*, 5 F.P.C. 472 (1946). Under a drastic condition of this type a proposed export could be defeated by any domestic request for the gas, no matter what the purpose. Although the Petition implies that such conditions were regularly imposed by the Commission, the overwhelming majority of Commission orders authorizing export both before and since 1946 contain no such condition.[9] Moreover, inasmuch as it was clear in all these cases that the proposed exportation posed no threat to the adequacy of domestic service, there is clearly no relationship between the absence of such a condition and the adequacy of service.

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[9] *E.g.*, Border Pipe Line Co., 15 F.P.C. 1387 (1956); Tennessee Gas Transmission Co., — F.P.C. — (1953), F.P.C. Opinion No. 261, dated Sept. 1, 1953; Rio Grande Valley Gas Co., 10 F.P.C. 807 (1951); Lopeno Gas Co., 9 F.P.C. 1317 (1950); United Gas Corp., 2 F.P.C. 803 (1940). The citation in the Petition (Petition, p. 12) of 26 F.P.C. Ann. Rep. 65 (1946) implies that the Commission reported to Congress an established policy of conditioning all export orders on the granting of absolute preference to domestic consumers. The above cited decisions indicate that no such policy existed, and in fact the Report merely states that, in 1946, such a condition was imposed in two Commission orders.

In this case, as in all other export authorizations, the Commission adequately safeguarded the public interest against future changes in circumstances by imposing the following condition:

> "The authorization hereby granted may be modified from time to time or terminated, after opportunity for hearing, upon further order of the Commission . . . .". (J.A. 1336).

In other words, instead of prejudging all questions of priority of service, the Commission provided for reopening of the export authorization if and when such questions arise.

The condition imposed by the Commission reflected a proper exercise of its discretion in view of the crippling effect on any export program which would be inherent in granting advance preference to any domestic request for gas and also in view of the demonstrated reliability of Panhandle's domestic service. It is clear, therefore, that the Commission's refusal to impose a more stringent condition did not constitute a departure from established policy, and, as the court below held, that the Commission did not abuse its discretion by providing as it did for the protection of the public interest.

II. There is no conflict of decisions.

The Petition asserts (Petition, pages 13-19) that the decision of the court below is in two respects in conflict with the decision of the Court of Appeals for the District of Columbia in *City of Pittsburgh* v. *F.P.C.*, 237 F. 2d 741 (D.C. Cir. 1956). It will be seen, however, that petitioner's claim of a conflict loses its significance once it has been shown that the alleged

deficiency of 187,200 Mcf is illusory. Comparison of the two cases, moreover, discloses that to the extent that there is any relationship between them, they are clearly in harmony.

(A) The *Pittsburgh* case involved a petition for review of a Commission order issued under Section 7 of the Natural Gas Act, 15 U.S.C. § 717f, authorizing abandonment by the Texas Eastern Transmission Corporation (Texas Eastern) of the "Little Inch" pipeline as a natural gas transmission line. In the hearing before the Commission, the president of Texas Eastern had testified that the proposed construction of a certain tie-line, which the Commission found to be a highly desirable project, would not be economically possible without abandonment of "Little Inch". When opponents of the abandonment application attempted to question him as to whether a certain degree of expansion would make the tie-line feasible even without abandonment of "Little Inch", the hearing examiner refused to permit such questioning and was sustained by the Commission on the ground that it had no jurisdiction to consider any alternatives to the specific abandonment proposal made by Texas Eastern. The court held that such questioning should have been permitted since the evidence was relevant to the decision. In a footnote, the court stated that whether or not the Commission had authority to command the alternative proposed by opponents of the abandonment application:

> "The existence of a more desirable alternative is one of the factors which enters into a determination of whether a particular proposal would serve the public convenience and necessity." 237 F. 2d at 751 n. 28.

Even apart from the fact that the *Pittsburgh* decision was wholly unrelated to Section 3 of the Act but instead involved a provision under which different considerations may be applicable, the *Pittsburgh* holding is still fully in accord with the holding of the court below. In the present case, the Commission did not refuse to receive evidence on petitioner's alternative proposal for conversion of the Howell Field to a storage area.[10] All the evidence petitioner offered in this connection was received and considered. No more than this was required by the *Pittsburgh decision*.[11] The Commission then found in the present case that on the basis of the record:

> "Material evidence is lacking respecting geological matters, operational cost items and other factors which it is necessary to consider in deciding whether or not the Howell Field can or should be developed for storage." (J.A. 1318).[12]

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[10] The reason for petitioner's Howell Field proposal was its recognition of the crucial fact that only through storage in the United States could the off-peak gas proposed for export to Canada possibly be used to meet alleged unsatisfied peak-day demands in the United States.

[11] In any event, the evidence on the availability of Howell Field for storage becomes completely irrelevant once it has been established, as it has in this case, that the alleged 187,200 Mcf deficiency was illusory and that Panhandle's service to its domestic customers was adequate.

[12] This finding is amply supported by the record. The petitioner's witness on the feasibility of using the Howell Field for storage, who was an employee of the petitioner (J.A. 454), admitted his lack of qualification for calculating certain geological factors upon which his testimony depended (J.A. 552-54). The witness further admitted that there were relevant operational cost items on which he could only make "pure guesses" (J.A. 556) and that there might well be factors of which he was unaware which Panhandle could reasonably take into account in deciding whether or not to develop the Howell Field for storage (J.A. 564).

The court below agreed that this finding was sufficient to dispose of petitioner's Howell Field proposal.

In urging that the Commission should be required to order Panhandle to show cause why petitioner's Howell Field proposal should not be adopted, petitioner goes far beyond the holding of the *Pittsburgh* decision or of any other case. Such an order, if proper at all, is clearly within the Commission's discretion; otherwise, there would be no limit to the burden which an opposing party, merely by making alternative proposals, could place upon the applicant in this type of proceeding. Furthermore, the propriety of such an order would, in any event, be open to serious question inasmuch as the Commission's function under Section 3 is not to determine which of several schemes is the most desirable but only to determine the compatibility of an export proposal with the public interest. Thus the court below properly held that whether or not the Commission could order development of storage facilities, "the burden of ascertaining the feasibility of an alternative proposal offered by an opposing party in a proceeding before the Commission is certainly not upon the Commission." 246 F. 2d at 910.[13]

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[13] Petitioner, on page 16, cites Trans-continental Gas Pipe Line Co., Inc., 7 F.P.C. 24, 41, 47 (1948); Transcontinental Gas Pipe Line Corp., 9 F.P.C. 32, 48 (1950), to show that the Commission has in fact required another pipeline company to submit a report on the feasibility of storage. There is, however, a considerable difference between the *Transcontinental* decisions and the present case. In *Transcontinental* the Commission, in the exercise of its discretion, decided that since storage facilities would enhance the reliability of applicant's proposed service, it would be helpful if the applicant submitted a study, within two years, of the feasibility

This aspect of the lower court's opinion is challenged in the second of the questions presented by the petitioner and brings into focus another effort by petitioner to create legal issues where there are none. It reflects, moreover, a gross misinterpretation of the lower court's opinion. Petitioner reads the court's opinion as though it said:

> ". . . *since* the Commission's authority to order Panhandle to develop and utilize its Howell Field for storage is 'more than doubtful,' the Commission was under no obligation to ascertain the feasibility of such 'an alternative proposal.'" (Petition, page 14) (Emphasis added)

It is abundantly clear from the context of the paragraph in which the court's opinion dealt with this matter that the court was merely saying that *whether or not* the Commission had power to require development of storage,[14] it was not mandatory for the Commission to assure that adequate evidence was produced; that burden rested with the party offering the alternative proposal.

(B) In the present case petitioner sought to call to the attention of the court an application by Panhandle for abandonment of service to petitioner.

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of a storage program. In the present case, the petitioner contends that it is reversible error for the Commission to fail to order the applicant to show cause why it should not adopt the petitioner's proposal for storage instead of exporting the off-peak gas to Canada.

[14] See Panhandle Eastern Pipe Line Co. v. F.P.C., 204 F. 2d 675 (3d Cir. 1953), which held that the Natural Gas Act prevented the Commission from requiring a natural gas company to enlarge its transportation facilities. Development of Howell Field for storage would necessarily require such an enlargement (J.A. 518).

This application was filed months after the Commission's order in this case had been issued and a year after the hearing had been concluded. Petitioner now claims that the ruling of the court below that "this question . . . . is not here today on the present record and we do not consider it," 246 F. 2d at 910, is in conflict with the holding of the *Pittsburgh* case.[15] The two cases, however, are so different that it is clear that no conflict exists.

In the *Pittsburgh* case, the Commission refused to consider the possible effect on the abandonment proceeding of an expected application by Texas Eastern to expand its gas facilities. Pending the appeal, the expected application was in fact filed, and the petitioners moved so to advise the court. The court held that the Commission's refusal to consider the effect of future expansion was erroneous. In ruling on the petitioner's motion, the court stated:

> "We need not decide the admissibility of the new application in the face of the argument that it occurred long after the hearing was closed. The record amply shows Texas Eastern's intention to apply for authority to expand its capacity and its sales . . . ." 237 F. 2d at 752.

In the present case the record is completely barren of any evidence that Panhandle planned to seek per-

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[15] Here again it is clear that the illusory nature of the alleged 187,200 Mcf deficiency virtually destroys the significance of the claimed conflict. Contrary to petitioner's contention, (Petition, pages 17-18), the relevance, if any, of the subsequent abandonment proceeding to the present case cannot possibly be determined until after the Commission has made findings in that proceeding.

mission for abandonment of service to petitioner.[16] In the *Pittsburgh* case, on the other hand, the Commission had expressly refused to consider the planned expansion and it was this refusal that was held to be error. In other words, the petitioner in the *Pittsburgh* case was claiming that Texas Eastern's admitted plans for expansion were relevant at the time of the Commission's decision, while in the instant case petitioner cannot claim that an event about which there was no evidence in the record and which occurred months after the Commission's order was relevant at the time of the order.

At the very most all that petitioner is entitled to claim is that the Commission's finding of adequate service is subject to re-examination in the light of subsequent developments. Inasmuch as the order authorizing export is, as noted above, subject to modification or termination, petitioner's remedy plainly does not lie in a review of the original order. If, at some time in the future, the abandonment proceeding should afford a basis for reopening the case, petitioner may so move the Commission. At such

[16] The petitioner did mention in its application for rehearing (J.A. 1376), that Panhandle had previously applied for permission to abandon approximately 30 percent of its service to petitioner. Denial of this application by the Commission was affirmed in Panhandle Eastern Pipe Line Co. v. F.P.C., 236 F. 2d 289 (3d Cir. 1956), over one month prior to the issuance of the Commission's decision on rehearing in the present case. The court's decision was based on a finding that Panhandle's existing capacity was in excess of its delivery obligations and that petitioner's other suppliers had not yet completed construction of their increased capacity. See 236 F. 2d at 294. There is apparently no question that the Commission, in deciding on the adequacy of Panhandle's service, took into consideration this earlier, unsuccessful attempt partially to abandon service to petitioner.

time, the Commission can decide whether the considerations involved in the abandonment proceeding require modification or termination of the export authorization.

In *Cia Mexicana de Gas, S. A.* v. *F.P.C.*, 167 F. 2d 804, 808 (5th Cir. 1948), the court, in an almost identical situation, stated:

> "It remains only to consider the motion of Cia Mexicana that it be granted leave, pursuant to Section 19 of the Natural Gas Act, 15 U.S.C.A. § 717r, to adduce additional evidence before the Commission as to facts which have occurred since the hearing. . . . If the matters with which the motion deals are material and if established will, or may, be effective to bring about a termination of the permit order, Cia Mexicana, or the State of Texas, or both, will be able to present them to the Commission on a motion to reopen as effectively as they could do if the matter were referred back by us for the taking of further testimony. Because this is so, we will, without determining any of the questions raised as to it, deny the motion to adduce additional evidence, without prejudice, however, to the right of the petitioners, on a proper showing, to reopen the proceeding before the Commission on the question of whether the permit should be modified or terminated."

Moreover, a reversal of the Commission's decision in the light of subsequent developments would have been highly questionable in view of this Court's holding in *I.C.C.* v. *Jersey City*, 322 U.S. 503, 514-15 (1944). In the *I.C.C.* case, this Court rejected an effort to require the Interstate Commerce Commission to grant a full rehearing on the basis of events which had occurred since the original hearing. In the

course of its opinion, this Court stated that in such matters, "The discretion to be invoked was that of the body making the order, and not that of a reviewing body."

CONCLUSION

Section 3 of the Natural Gas Act requires the Commission to issue an order authorizing exportation unless it finds that the exportation would not be consistent with the public interest. In administering this provision the Commission has elaborated various relevant considerations, the most important of which is the adequacy of the applicant's service to domestic customers. A full hearing was held in the present case, and evidence on all relevant matters was introduced and fully considered by the Commission.

After making specific findings on the petitioner's alternative proposal for storage and on the adequacy of Panhandle's existing service to domestic customers, the Commission concluded that the proposed exportation was consistent with the public interest. The court below held that this decision was supported by substantial evidence.

Thus, despite petitioner's efforts to present the case as turning upon a problem of statutory construction, it can readily be seen to involve merely questions of fact. These fact questions were decided adversely to petitioner both by the agency charged with the fact-finding function under the Natural Gas Act,[17] and by the court that bears primary responsibility for

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[17] This Court has frequently stated that it will not substitute its judgment for that of an administrative agency on matters which have received adequate consideration by the agency. *E.g.*, F.P.C. v. Hope Natural Gas Co., 320 U.S. 591, 615 (1944).

reviewing such findings of fact. See *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 491 (1951). Inasmuch as the Commission considered all the evidence and applied the proper legal criteria, and inasmuch as there is no conflict with a decision of any other circuit, there is no question in the case deserving consideration by this Court.

For the foregoing reasons the petition for writ of certiorari should be denied.

Respectfully submitted,

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